

Senate Bill 190

By: Senators Harp of the 29th, Meyer von Bremen of the 12th, Moody of the 56th, Goggans of the 7th, Thomas of the 54th and others

AS PASSED

AN ACT

To amend Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to issues of insanity and mental incompetency in pretrial proceedings, so as to provide for definitions; to provide that the committing court may have discretion to allow evaluation in the community for certain defendants; to provide that the committing court can order an evaluation of the defendant; to provide for the committing court to conduct a civil commitment hearing on the defendant; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 6 of Chapter 7 of Title 17 of the Official Code of Georgia Annotated, relating to issues of insanity and mental incompetency in pretrial proceedings, is amended by revising Code Section 17-7-130, relating to proceedings upon a plea of mental incompetency to stand trial, as follows:

"17-7-130.

(a) As used in this Code section, the term:

(1) 'Committing court' means the court which has jurisdiction over the criminal charges against the defendant.

(2) 'Inpatient' shall have the same meaning as in paragraph (9.1) of Code Section 37-3-1.

(3) 'Nonviolent offense' means any offense other than:

(A)(i) Murder;

(ii) Rape;

(iii) Aggravated sodomy;

(iv) Armed robbery;

(v) Aggravated assault;

(vi) Hijacking of a motor vehicle or an aircraft;

(vii) Aggravated battery;

(viii) Aggravated sexual battery;

- (ix) Aggravated child molestation; or
 - (x) Aggravated stalking;
 - (xi) Arson in the first degree and in the second degree;
 - (xii) Stalking;
 - (xiii) Fleeing and attempting to elude a police officer;
 - (xiv) Any sexual offense against a minor; or
 - (xv) Any offense which involves the use of a deadly weapon or destructive device;
- and

(B) Those felony offenses deemed by the committing court to involve an allegation of actual or potential physical harm to another person.

(4) 'Outpatient' shall have the same meaning as in paragraph (12.1) of Code Section 37-3-1, provided that the court determines that the defendant meets the criteria for release on bail or other pre-trial release pursuant to Code Section 17-6-1.

(b) Whenever a plea is filed that a defendant in a criminal case is mentally incompetent to stand trial, it shall be the duty of the court to cause the issue of the defendant's mental competency to stand trial to be tried first by a special jury. If the special jury finds the defendant mentally incompetent to stand trial, the court shall retain jurisdiction over the defendant but shall transfer the defendant to the Department of Human Resources; provided, however, that if the defendant is charged with a misdemeanor offense other than as included in subparagraph (A) of paragraph (3) of subsection (a) of this Code section or a nonviolent offense, the court may, in its discretion, retain jurisdiction over the defendant, and may allow evaluation to be done on an outpatient basis by the Department of Human Resources. If the court allows outpatient evaluation and the defendant is in custody, the court may release the defendant in accordance with the provisions of Code Section 17-6-1, et.seq.

(c) Within 90 days after the Department of Human Resources has received actual custody of a defendant or, in the case of an outpatient, a court order requiring evaluation of a defendant pursuant to subsection (b) of this Code section, the defendant shall be evaluated and a diagnosis made as to whether the defendant is presently mentally incompetent to stand trial and, if so, whether there is a substantial probability that the defendant will attain mental competency to stand trial in the foreseeable future. If the defendant is found to be mentally competent to stand trial, the department shall immediately report that finding and the reasons therefor to the committing court; and the defendant shall be returned to the court as provided for in subsection (f) of this Code section.

(d) If the defendant is found to be mentally incompetent to stand trial by the Department of Human Resources and there is not a substantial probability that the person will attain competency in the foreseeable future, the department shall return the physical custody of the defendant to a law enforcement officer of the jurisdiction of the court which committed the defendant unless in the opinion of the department's attending physician, and with concurrence of the court, such detention by law enforcement would be detrimental to the well-being of the defendant, in which case the defendant may be held by the department until the date of the defendant's hearing. The department shall report to the committing court the finding regarding competency, the reasons therefor, and its opinion as to whether the defendant currently meets criteria for commitment as an inpatient or as an outpatient pursuant to Chapters 3 or 4 of Title 37. The law enforcement officer of the jurisdiction of the court which committed the defendant shall retain custody of the defendant and the committing court may order an independent evaluation of the defendant by a court appointed licensed clinical psychologist or psychiatrist, who shall report to the court in writing as to the current mental and emotional condition of the defendant. Based on consideration of all evidence and all reports, the committing court may:

- (1) Refer the case to the probate court for commitment proceedings pursuant to Chapter 3 or 4 of Title 37, if appropriate and if the charges are dismissed for any reason; or
- (2) Retain jurisdiction of the defendant and conduct a hearing at which it shall hear evidence and consider all psychiatric and psychological reports submitted to the court and determine whether the state has proved by clear and convincing evidence that the defendant meets the criteria for involuntary civil commitment as an inpatient or as an outpatient pursuant to Chapter 3 or 4 of Title 37, whichever is applicable. The burden of proof in such hearings shall be upon the state.

(A) If the defendant does not meet the criteria for inpatient or outpatient civil commitment, the defendant shall be released in accordance with the provisions of Code Section 17-6-1 et. seq.

(B) If the defendant is found to meet the criteria for involuntary civil commitment as an inpatient or outpatient, the judge may issue an order committing the defendant.

(i) If the defendant so committed is charged with a misdemeanor offense, the committing court may civilly commit the defendant for a period not to exceed one year. Following the commitment period, the charges against the defendant shall be dismissed by operation of law.

(ii) A defendant who is so committed and is charged with a felony may only be released from that inpatient or outpatient commitment by order of the committing

court in accordance with the procedures specified in paragraphs (1) through (3) of subsection (f) of Code Section 17-7-131 except that the burden of proof in such release hearing shall be on the state and if the committed person cannot afford a physician or licensed clinical psychologist of the defendant's choice, the person may petition the court and the court may order such cost to be paid by the county. The Department of Human Resources shall report annually to the committing court on whether the civilly committed defendant continues to meet criteria for involuntary commitment as an inpatient or an outpatient pursuant to Chapter 3 or 4 of Title 37. The committing court shall review the case and enter an appropriate order, either to renew the inpatient or outpatient civil commitment, to change the commitment either from inpatient to outpatient or from outpatient to inpatient, or in the event charges are dismissed, transfer the jurisdiction of the case to the probate court for further proceedings pursuant to Title 37, if appropriate.

(e) If the defendant is found to be mentally incompetent to stand trial but there is a substantial probability that the person will attain competency in the foreseeable future, by the end of the 90 day period, or at any prior time, the department shall report that finding and the reasons therefor to the committing court and shall retain custody over the defendant for the purpose of continued treatment for an additional period not to exceed nine months; provided, however, that if the defendant is charged with a misdemeanor offense or a nonviolent offense, the court shall retain jurisdiction over the defendant, but may, in its discretion, allow continued treatment to be done on an outpatient basis by the Department of Human Resources. The department shall monitor the defendant's outpatient treatment for an additional period not to exceed nine months. If, by the end of the nine-month period or at any prior time if the defendant's condition warrants, the defendant is still found not to be competent to stand trial, irrespective of the probability of recovery in the foreseeable future, the department shall report that finding and the reasons therefor to the committing court. The committing court shall then follow the procedures in subsection (d) of this Code section for further commitment or release.

(f)(1) If the defendant found to be mentally incompetent to stand trial is at any time found by the Department of Human Resources to be mentally competent to stand trial, the committing court shall be notified. A defendant who is an inpatient and is found by the Department of Human Resources to be mentally competent to stand trial shall be discharged into the custody of a law enforcement officer of the jurisdiction of the court which committed the defendant to the department unless the charges which led to the commitment have been dismissed, in which case the defendant shall be discharged. In

the event a law enforcement officer does not appear and take custody of the defendant within 20 days after notice to the appropriate law enforcement official in the jurisdiction of the committing court, the presiding judge of the committing court, and the prosecuting attorney for the court, the department shall itself return the defendant to one of the committing court's detention facilities; and the cost of returning the defendant shall be paid by the county in which the committing court is located. All notifications shall be sent by certified mail or statutory overnight delivery, return receipt requested. With the concurrence of the appropriate court and upon the recommendation of the department's attending physician, any defendant discharged as competent to stand trial may be held by the department instead of at the court's detention facilities whenever, in the attending physician's opinion, such detention in the court's facilities would be detrimental to the well-being of the defendant so committed. Such alternative detention shall continue only until the date of the defendant's trial.

(2) A defendant who is an outpatient and is found by the Department of Human Resources to be mentally competent to stand trial may remain in the community under conditions of bond or other conditions ordered by the committing court, if any, until the date of the person's trial.

(g) Any person found by the Department of Human Resources to be mentally competent to stand trial returned to the court as provided in subsection (f) of this Code section shall again be entitled to file a special plea as provided for in this Code section.

(h) If a defendant is found to be mentally incompetent to stand trial, whether or not committed pursuant to this Code section, the state may file at any time a motion for rehearing on the issue of the defendant's mental competency. The court shall grant said motion upon a showing by the state that there are reasonable grounds to believe that the defendant's mental condition has changed. If this motion is granted, the case shall proceed as provided in subsection (b) of this Code section."

SECTION 2.

All laws and parts of laws in conflict with this Act are repealed.